



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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IRM 11.3.13.5

MEMORANDUM FOR ALL GLD AREA MANAGERS

FROM: Joseph R. Aceto /s/ Joseph R. Aceto
Director, Governmental Liaison & Disclosure

SUBJECT: Re-issuance of Interim Guidance on Procedures for Processing
Freedom of Information Act Requests for Joint Committee
Records

The purpose of this memorandum is to re-issue Interim Guidance Memorandum SBSE-11-1006-034 for Governmental Liaison and Disclosure employees. The memo transmitted interim guidance required for processing Freedom of Information Act (FOIA) requests for records that reference the Joint Committee on Taxation (Joint Committee). Please disseminate this memorandum to your Disclosure staff.

The following general guidelines have been developed for replying to FOIA requests for IRS records that include references to the Joint Committee.

- A general oversight request from the Joint Committee (under IRC §§ 8022, 8023 or 6103(f)) and any documents created by the IRS in connection with such a request are not IRS "agency records" for purposes of the FOIA. The incoming request from the Joint Committee has a restrictive legend and the documents created by the IRS in response are maintained separately from other IRS files and are available only to those persons involved in the matter. So, a FOIA requester who specifically asks for records relating to such an oversight inquiry should be informed that any such records would be congressional, not agency, records and not subject to the FOIA.
- Under IRC § 6405, the Joint Committee conducts a review of the IRS's proposed issuance of refunds or credits in excess of a certain statutory amount (currently \$2 million). Communications between the IRS and the Joint Committee in this context are not restricted or maintained separately. Any documents or information received from the Joint Committee or prepared by the IRS in response are IRS "agency records" subject to the FOIA.
- If a FOIA request does not, on its face, seek documents relating to a Joint Committee inquiry about an IRS matter; however, IRS personnel identify communications between the IRS and Joint Committee in files that have been determined to be responsive to the FOIA request, then the documents are IRS "agency records" subject to the FOIA.

- FOIA requests received in the field that seek access to records involving the Joint Committee will be coordinated with Headquarters.

The procedures that follow provide specific guidance for determining when Joint Committee records are agency records subject to the FOIA and for processing FOIA requests that include those records. This guidance will be incorporated into IRM 11.3.13.5 by December 31, 2007. If you have any questions, please contact Malia Berumen, FOIA Senior Tax Law Specialist.

Attachment

cc: irs.gov

Joint Committee on Taxation

- (1) The Joint Committee on Taxation is authorized to receive information, including returns and return information, from the IRS pursuant to various provisions in the Internal Revenue Code. See IRC Sections 6103(f)(2), 6405, and 8023.
- (2) IRC Section 8021 authorizes the Joint Committee to request information, including returns and return information pursuant to section 6103(f), for the purpose of carrying out its oversight authority. Whenever the Joint Committee corresponds with the IRS under this general oversight authority, it includes a legend on the incoming correspondence that restricts the dissemination and use of both the inquiry and responsive records. The Joint Committee reserves the right to adjust the legend as needed, after coordination with the Service.

Note: At this time, the legend provides:

This document is a record of the Joint Committee on Taxation ("Joint Committee") and is entrusted to the IRS for your use only in handling this matter. Additionally, any documents created by the IRS in connection with a response to this Joint Committee document, including (but not limited to) any replies to the Joint Committee, are records of the Joint Committee and shall be segregated from agency records and remain subject to the control of the Joint Committee. Accordingly, the aforementioned documents are not 'agency records' for purposes of the FOIA. Absent explicit Joint Committee authorization, access to this document and any responsive documents shall be limited to IRS personnel who need such access for the purposes of providing information or assistance to the Joint Committee.

- (3) Whenever the Joint Committee's inquiry letter includes a restrictive legend, the file that is created for the IRS's reply, as well as any accompanying documents, may only be accessed by IRS personnel for the sole purpose of providing information to, or otherwise assisting, the Joint Committee. Copies of the inquiry letter and the IRS response are maintained by the Office of Legislative Affairs in their Executive Correspondence Management System (ECMS). Copies of records compiled by the IRS to respond to the Joint Committee inquiry are maintained in the office of the IRS component chiefly responsible for preparing the response.
- (4) Whenever the Joint Committee's inquiry letter includes a legend, that letter remains a congressional record. In addition, any records created by the IRS in connection with the agency's response to the Joint Committee's inquiry, including (but not limited to) the IRS reply letter, will also be treated as congressional records. Accordingly, the inquiry letter from the Joint Committee, and any records created by the IRS as a result of, or in response to, that inquiry, are not agency records responsive to a FOIA request and must not be released under the FOIA. Moreover, the IRS file(s) associated with providing records to the Joint Committee need not be

searched for responsive records because the records the files contain are not agency records.

- (5) FOIA requests received in the field that seek access to records involving the Joint Committee will be coordinated with Headquarters. Disclosure personnel will consult with the Joint Committee, as well as any affected IRS function(s), before determining whether to release or withhold any agency records that are the subject of a Joint Committee oversight inquiry.
- (6) Depending upon the wording of the FOIA request, copies of records created and maintained by the IRS in the normal course of its operations that are subsequently provided to the Joint Committee in response to a general oversight inquiry may be agency records subject to the provisions of the FOIA, or may be considered congressional records not subject to the FOIA.
 - a) If the FOIA request specifically asks for records reviewed by the Joint Committee, the disclosure of any records, or even the acknowledgement that these records exist in the context of a Joint Committee inquiry, may confirm that the Joint Committee had exercised its general oversight responsibilities. These records are congressional records because the Joint Committee inquiry letter bears a legend, the records are maintained in files pertaining to the Joint Committee oversight inquiry, segregated from agency files, and accessible only by IRS personnel involved in responding or providing assistance to the Joint Committee.

Note: Where a FOIA requester asks for “all requests by the Joint Committee for [a particular matter],” the IRS will issue a determination that, to the extent such records exist; they are congressional records and are not subject to the FOIA.

- b) If the FOIA request seeks a file, such as an examination file, which happens to contain records generated in the normal course of its operations that were subsequently furnished to the Joint Committee as part of its general oversight responsibilities, the records are agency records subject to the FOIA. Because neither the acknowledgement nor the release of the records reveals the existence or the subject of a Joint Committee oversight inquiry, they remain agency records. In the absence of any applicable FOIA exemption, the records in the file will be provided to the requester. For treatment of Joint Committee records in section 6405 refund or credit cases, see IRM 11.3.4.6 and 4.36.3.10.

Note: Where a FOIA requester asks for “all records on me” and it is determined that the IRS is in possession of copies of, for example, an incoming Joint Committee general oversight inquiry letter bearing a Joint Committee legend, the IRS reply letter, or any records prepared by the IRS as part of its response to the Joint Committee inquiry, such records are not agency records. These records must not be identified as part of the agency’s

responsive records in the FOIA determination letter. However, any other records responsive to the request that are agency records are to be processed under the normal FOIA exemption procedures.

- (7) In addition to its general oversight authority under section 8023, the Joint Committee may also conduct a review under section 6405 of the IRS's proposed issuance of refunds or credits that meet the jurisdictional threshold. Section 6405 directs the IRS to delay the issuance of large refunds or credits for a thirty day period to afford the Joint Committee an opportunity to review the proposed action. Correspondence or other documentation reflecting the Joint Committee's review of these proposed credits or refunds will be maintained separately within the administrative file of the taxpayer to whom it pertains. Joint Committee correspondence in this context does not contain a legend, and any documents or information received from the Joint Committee or prepared by the IRS in response thereto will constitute agency records subject to the FOIA. See IRM 4.36.1.2, 4.36.3.10, 4.36.4.6, 11.3.4.6.
- (8) After consulting with the Joint Committee as to whether correspondence from the Joint Committee pertaining to its section 6405 review will be withheld from the taxpayer-requester, the IRS may assert a number of FOIA exemptions to withhold the information. For example, correspondence or other information provided by the Joint Committee to the IRS for the latter's consideration before issuing the refund or credit may be withheld on the basis of FOIA exemption 5, which encompasses the deliberative process privilege. In addition, the FOIA exemption 7 law enforcement exemptions, as well as exemption 3 in conjunction with section 6103(e)(7), may be available if the case is pending at the time of the request. If the requester is a third party seeking such records without the consent of the taxpayer, such records are protected by FOIA exemption 3 in conjunction with section 6103(a).